

REMARKS

New claims 29-46 replace pending claims 1-7, 9, 10, 12-18, 21 and 43. Support for the new claims is found throughout the specification and drawings.

In the action mailed October 24, 2003, the Examiner rejected claims 1-7 as unpatenable under 35 USC §103 over Oosterlinck in view of Warther, claim 9 in view of Oosterlinck in view of Warther and Kirk and the allegedly admitted prior art; claim 10 and 12, 13 and 14 over Oosterlinck in view of Warther and the allegedly admitted prior art. Applicant submit that new claims 29-46 are not obvious over the cited references.

The primary reference, Oosterlinck teaches a method for converting and applying labels to various articles. In Oosterlinck a web of base stock consisting of a face web and a backing liner are fed into a converting machine. Once there, the face material is separated from the liner and then cut into labels. The labels and liner are then reunited to form releasably lined labels (see Col 3:50 – 55). The labels are then printed and then separated from the liner and applied to an article. (Col 3:55 – 60). The Oosterlinck is silent as to the shape of the labels.

This is in stark contrast to the present invention where the facing material remains associated with the liner during the cutting process. In fact, Oosterlinck teaches a way from this type of process noting that the technique used in the present invention is associated with various problems that the process of Oosterlinck is designed to overcome. (see, e.g. Col 2:35 – 40).

This teaching away from the process used in the present invention and the failure to teach a triangular shape is not remedied by the other references cited by the Examiner.

Warther, et al. does not remedy the deficiencies of Oosterlinck.

Applicants again point out that Warther is not analogous prior art in that it relates to tags, not labels. Warther is listed in a different class than that of the present invention even with respect to the related class and the field of search. In addition, Warther fails to meet the two part test for analogous art set forth by the Federal Circuit in *In re Deminski*, 230 U.S.P.Q. 313 (Fed.

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Cir. 1986). In *Deminski*, the Court stated that the reference must be either (1) "within the field of the inventor's endeavor" or (2) "reasonably pertinent to the particular problem with which the inventor was involved." It is unpermissible, however, to use hindsight to combine elements from nonanalogous art to create applicant's invention.

The present invention is directed to adhesive labels that can be used in a Food Safety labeling system. The labels can be affixed to a variety of food storage containers and contain printed text to direct the user where and how food should be consumed.

Warther, on the other hand, discloses tags with at least one magnetic strip with the magnetic strip containing the relevant information. The tags themselves can not be directly attached to a container or product but require some other means to attach the tag to the container or product. The only teaching of an adhesive layer is that used to hold the magnetizable strip to the tag. Applicant submits that one working on tags requiring a separate attachment means is not the same field of endeavor as self adhesive labels. Moreover, applicant submit there is nothing in Warther to make it reasonably pertinent to the problem the applicant was trying to solve.

Even assuming that Warther is analogous art, the reference, even in combination with Oosterlinck does not teach or suggest the present invention. First, there is nothing in any of the references to teach or suggest combining the references in the manner suggested by the Examiner. Absent such a teaching in the references, such a combination is improper.

The Examiner has suggested that the magneticable strip is analogous to the liner of the present invention. Applicant respectfully submits that this is contrary to the teachings of Warther and the claims as currently amended.

The present claims require that the liner be such that the labels can be removed or separated from the liner. In fact, only by removing the label from the liner can the label be put to its intended use.

In contrast, the whole teaching of Warther is a tag with a magnetizable strip. Removing the strip would destroy the invention described in Warther. An argument or combination that is

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directly contrary to the teaching of a reference is not proper. Thus, Applicant respectfully submits that the Examiner's interpretation of Warther is improper.

Given that none of the other rejections are dependent on the teachings of Oosterlinck and Warther and that those references can not be properly combined, Applicant submits that the other rejections fail as well.

St. Aubin

The Examiner also rejects the pending claims 15-24 as unpatentable under 35 USC §103 in view of St. Aubin combined with the allegedly admitted prior art.

Applicant submits that the new claims are not obvious in view of St. Aubin.

St. Aubin is directed to a label which has been prescored such that when an attempt is made to remove the label, the label tears leaving a residual piece of the label on the product or package. This residual piece gives the user a quick visual clue that the original label has been tampered. The residual piece may be triangular in shape. The triangle will have two angles of from 42 to 52 degrees.

In the present invention, the entire label is triangular in shape and contains all of the information presented on the label. Moreover, the sides of the labels are of equal length indicating a unilateral triangle. An equilateral triangle has three angles of 60°.

While St. Aubin may teach a triangular shaped label residue, that may contain some of the information in the original label, it does not teach or suggest a label that is in the shape of an equilateral triangle and contains all of the information the label is meant to convey. Nothing in the allegedly admitted prior art remedies these deficiencies. Moreover, the Examiner has not shown any motivation in the references themselves to make his proposed combination.

Applicant respectfully submits that the new claims are free of the art and are in condition for allowance.

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In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However if any fee is due, please charge our Deposit Account No. 501257.

Respectfully submitted,
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